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COURT OF APPEALS
DIVISION TWO

IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

DOLLY G. TETERS, Plaintiff/Appellant, v. NELLIE FLORES, Defendant/Appellee.	2 CA-CV 2010-0131 DEPARTMENT B MEMORANDUM DECISION Not for Publication Rule 28, Rules of Civil Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. C20071900

Honorable Stephen C. Villarreal, Judge

AFFIRMED IN PART
APPEAL DISMISSED IN PART

Dolly G. Teters

Tucson
In Propria Persona

V Á S Q U E Z, Presiding Judge.

¶1 In this appeal, Dolly Teters challenges the trial court's order vacating a default judgment against defendant/appellee Nellie Flores and its subsequent denial of Teters's motion, filed pursuant to Rule 60(c), Ariz. R. Civ. P., seeking to set aside the court's order vacating the default judgment.[1] For the reasons stated below, we dismiss Teters's appeal from the order granting Flores's motion to set aside the default judgment because the notice of appeal was untimely and we lack jurisdiction. However, because the notice was timely as to Teters's appeal from the trial court's denial of her Rule 60(c) motion, we address Teters's challenge to the propriety of that ruling and affirm.

Factual and Procedural Background

¶2 We view the facts in the light most favorable to upholding the trial court's ruling. *Ezell v. Quon*, 224 Ariz. 532, ¶ 2, 233 P.3d 645, 647 (App. 2010). In 2006, Teters was hired as a van driver by Juan Manuel Yepiz and Hector Yepiz, Jr., doing business as Yepiz Shuttle. In April 2007, Teters sued her employers and Chino Yepiz, alleging breach of contract, conspiracy, and fraud. Teters claimed that her employers had failed to pay wages and reimburse her for work-related expenses and that the defendants had failed to repay two loans she had made to the shuttle business. Although the complaint did not list her as a defendant, Nellie Flores, sister of Juan Manuel Yepiz, was served with the summons and complaint. Apparently, Flores had given Teters a check for $1,000 in partial payment of the loans Teters had made to the company. Flores did so

[1]Teters did not below, nor does she on appeal, refer to this motion as a Rule 60(c) motion. However, because the motion contained language from Rule 60(c)(1), Ariz. R. Civ. P., and the trial court characterized and addressed it as such in its order denying the motion, we do the same.

because she owed money to her brother and had been instructed to pay the amount directly to Teters.

¶3 None of the defendants filed an answer to the complaint or otherwise appeared in the action. Two years later, Teters filed an application for entry of default. The trial court then entered default judgment against the named defendants and Nellie Flores for the amount of $35,375.60. After a deputy sheriff unsuccessfully attempted to levy against some of Flores's property, Flores filed a "motion for stay of execution of judgment and for relief from judgment," pursuant to Rule 60(c). Following a hearing on February 16, 2010, which Teters failed to attend, the court granted Flores's motion to set aside the default judgment. Two days later, Teters filed a Rule 60(c) motion seeking to set aside the order vacating the default judgment, arguing her absence from the hearing was due to "inadvert[e]nce, mistake, and/or excusable neglect." The court denied the motion. This appeal followed.

Discussion

I. Jurisdiction

¶4 "This court may not address an issue or provide relief if it lacks jurisdiction to do so and we have an independent duty to ensure that we have jurisdiction before addressing the merits of any claim raised on appeal." *State v. Bejarano*, 219 Ariz. 518, ¶ 2, 200 P.3d 1015, 1016 (App. 2008). "[W]here the appeal is not timely filed, the appellate court acquires no jurisdiction other than to dismiss the attempted appeal." *Edwards v. Young*, 107 Ariz. 283, 284, 486 P.2d 181, 182 (1971).

¶5 A notice of appeal must be filed "no . . . later than 30 days after the entry of the judgment from which the appeal is taken." Ariz. R. Civ. App. P. 9(a). Here, the trial court granted Flores's Rule 60(c) motion and set aside the default judgment against Flores on February 16, 2010. An order granting or denying a Rule 60(c) motion to set aside a judgment is appealable as a "special order made after final judgment." A.R.S. § 12-2101(C); *M & M Auto Storage Pool, Inc. v. Chem. Waste Mgmt., Inc.*, 164 Ariz. 139, 141, 791 P.2d 665, 667 (App. 1990). However, a Rule 60(c) motion does not extend the time for filing an appeal. *See* Ariz. R. Civ. App. P. 9(b). Thus, Teters was required to file her notice of appeal from the order vacating the default judgment by March 18, 2010. Because she did not file the notice until May 28, 2010, her appeal from that order was untimely. We therefore lack jurisdiction to decide this issue.

¶6 Similarly, we lack jurisdiction over Teters's claims that the trial court erred in denying her motion for an expedited hearing on Flores's motion to set aside and that another judge erred in denying her motion to remove the trial judge from the case for bias and prejudice. Those orders were interlocutory orders—ones that "do[] not resolve a matter on the merits and may or may not be essential to the judgment." *State v. Whelan*, 208 Ariz. 168, ¶ 22, 91 P.3d 1011, 1017 (App. 2004). Such orders are not reviewable by direct appeal but only by special action. *See Ariz. Dep't of Econ. Sec. v. Kennedy*, 143 Ariz. 341, 343, 693 P.2d 996, 998 (App. 1985); *Dowling v. Stapley*, 221 Ariz. 251, n.17, 211 P.3d 1235, 1261 n.17 (App. 2009) (procedural orders not appealable); *Nordstrom v.*

Leonardo, 214 Ariz. 545, ¶ 2, 155 P.3d 1069, 1070 (App. 2007) (order denying request for change of judge not appealable).[2]

II. Denial of Rule 60(c) Motion

¶7 Teters argues the trial court erred in denying her Rule 60(c) motion to set aside the order vacating the default judgment.[3] We review an order denying a Rule 60(c) motion for an abuse of discretion. *Aileen H. Char Life Interest v. Maricopa County*, 208 Ariz. 286, ¶ 39, 93 P.3d 486, 498 (2004). And, "[t]he scope of an appeal from a denial of a Rule 60 motion is restricted to the questions raised by the motion to set aside and does not extend to a review of whether the trial court was substantively correct in entering the

[2]A timely appeal from a final judgment "properly place[s] before [this court] the propriety of all prior non-appealable orders," *Pepsi-Cola Metro. Bottling Co. v. Romley*, 118 Ariz. 565, 568, 578 P.2d 994, 997 (App. 1978), but as we have determined, Teters's appeal from the order vacating the default judgment was untimely. Consequently, we lack jurisdiction to address the propriety of the court's denial of Teters's request for an expedited hearing. And, even though Teters's motion to remove the trial judge for cause was filed after the February 16 order vacating the default judgment, as we have noted, it was not an appealable order. *See Nordstrom v. Leonardo*, 214 Ariz. 545, ¶ 2, 155 P.3d 1069, 1070 (App. 2007).

[3]Teters's opening brief does not comply with Rule 13(a), Ariz. R. Civ. App. P. It contains no table of citations, references to the record, or argument with citations to authorities; nor does it articulate a standard of review. And, even though Teters is a nonlawyer representing herself, she is held to the same standards as a qualified attorney. *See Old Pueblo Plastic Surgery, P.C. v. Fields*, 146 Ariz. 178, 179, 704 P.2d 819, 820 (App. 1985). Thus, Teters's failure to comply would justify our summary dismissal of her appeal. *See In re $26,980.00 U.S. Currency*, 199 Ariz. 291, ¶ 28, 18 P.3d 85, 93 (App. 2000) (court does not consider bare assertion offered without elaboration or citation to legal authority); *Brown v. U.S. Fid. & Guar. Co.*, 194 Ariz. 85, ¶ 50, 977 P.2d 807, 815 (App. 1998) (same). But because we prefer to resolve cases on their merits, *Clemens v. Clark*, 101 Ariz. 413, 414, 420 P.2d 284, 285 (1966), we address Teters's challenge to the order denying her Rule 60(c) motion on the merits.

judgment from which relief was sought." *Hirsch v. Nat'l Van Lines, Inc.*, 136 Ariz. 304, 311, 666 P.2d 49, 56 (1983).

¶8 Apparently believing her presence at the hearing on Flores's motion to set-aside the default judgment would have altered its outcome, Teters argued in her Rule 60(c) motion that her absence from the hearing was due to "[i]nadvert[e]nce, mistake, and/or excusable neglect." She maintained that she had been in California attending to a family emergency and her absence was unavoidable. Rule 60(c)(1) permits a trial court to relieve a party from a final judgment or order if the party demonstrates "mistake, inadvertence, surprise or excusable neglect." In denying the motion, the trial court found as follows:

> [Teters] concedes that she was aware of the hearing date. She failed to notify the Court of her circumstances by telephone or mail and she failed to request a continuance during the nine days prior to the hearing that she was in California. This failure to contact the Court was, apparently, due to the distraction of caring for her distressed grandson. She also admits that she has communicated with the Court previously by mail on scheduling issues. The Court is also aware that she has previously communicated with the Court telephonically on scheduling issues. [Teters], therefore, is familiar with the process of communicating with the Court.

The court concluded that "these circumstances do not constitute mistake, inadvertence or excusable neglect. [Teters] was aware of the hearing, but chose not to communicate with the Court or to request a continuance prior to the hearing." We agree.

¶9 Neglect, as it is used in Rule 60(c)(1), is excusable if it "'might be the act of a reasonably prudent person under the same circumstances.'" *Jarostchuk v. Aricol Commc'ns, Inc.*, 189 Ariz. 346, 348, 942 P.2d 1178, 1180 (App. 1997), *quoting City of*

Phoenix v. Geyler, 144 Ariz. 323, 331, 697 P.2d 1073, 1081 (1985). The trial court did not abuse its discretion in denying Teters's motion.

Disposition

¶10 For the reasons stated above, we dismiss Teters's appeal as it relates to the trial court's order vacating the default judgment, and affirm in all other respects.

/s/ Garye L. Vásquez
GARYE L. VÁSQUEZ, Presiding Judge

CONCURRING:

/s/ Peter J. Eckerstrom
PETER J. ECKERSTROM, Judge

/s/ Joseph W. Howard
JOSEPH W. HOWARD, Chief Judge